



The General Data Protection Regulation may have an impact on whether personal data in criminal judgments can be protected by confidentiality, even if constitutional protection applies

With reference to the EU General Data Protection Regulation, the Supreme Court finds that there is confidentiality when a news agency has requested access to a large number of judgments and other documents in criminal cases. The documents have, however, been disclosed with reservations.

A news agency requested a large number of judgments and other documents in criminal cases from a Court of Appeal. With reference to the General Data Protection Regulation and the case law of the Court of Justice of the European Union, the Court of Appeal concluded that the personal data contained within the documents was confidential and disclosed the documents with reservations. The reservations limited the news agency's right to use and pass on the information.

The Supreme Court has changed the Court of Appeal's decision only in the sense that the reservation has been adjusted to better enable the news agency to continue its journalistic activities by, for instance, publishing editorially edited news texts.

In its ruling, the Supreme Court states that the news agency's operations have constitutional protection, and that the legislator can be assumed to have intended that the General Data Protection Regulation should not be applicable on operations with such protection. Such an interpretation means that criminal judgments must be disclosed, even when the request relates to a larger number of documents, and that there are very limited possibilities to intervene against the subsequent processing. The Supreme Court finds that such an arrangement cannot be considered compatible with the General Data Protection Regulation.

The Supreme Court has subsequently examined the question of confidentiality pursuant to Chapter 21, section 7 of the Public Access to Information and Secrecy Act and concluded that there is ground for confidentiality.

On this basis, the Supreme Court adjusts the reservations so that they prevent the documents – with the personal data contained in them – from being provided by the news agency, and from making the information searchable for others, but at the

same time allows personal data being used in, for example, news texts or news material produced by the agency.

"The Supreme Court has made the assessment that the order that the legislator wanted to achieve cannot be reconciled with the General Data Protection Regulation. The court has therefore interpreted the Swedish regulation in such a way that it is possible to take the General Data Protection Regulation into account when applying the Public Access to Information and Secrecy Act. To achieve a system that strikes a more comprehensive balance between freedom of expression and information and data protection, legislative measures are needed." This is according to Petter Asp, one of the justices who participated in the decision.

At the same time, the Supreme Court has decided another case where the outcome was the same (Ä 3169-24). This concerned a company that provides information for background checks, but also engages in journalistic activities to a certain extent.

The cases have been decided by the Supreme Court in a composition of seven members, which included three justices from the Supreme Administrative Court.

A translation into English of the Supreme Court's decision will be available within a few weeks.

Designation

"GDPR and judgments in criminal cases I and II"

Facts

In the cases, the EU's General Data Protection Regulation, the secrecy provision in Chapter 21, section 7 and the provision on reservations in chapter 10, section 14 of the Public Access to Information and Secrecy Act has been applied, as well as the provisions of chapter 1, section 7 of the Act containing supplementary provisions to the EU General Data Protection Regulation.

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